

ILLINOIS COMMERCE COMMISSION

Petition of BMC Energy, LLC for a )  
determination that an electric generating )  
facility fueled by landfill methane and )  
located adjacent to the EnvironTech )  
Landfill in Morris, IL is a Qualified Solid )  
Waste Energy Facility as defined in )  
Section 8-403.1 of the Illinois Public )  
Utilities Act )  
)

No. 000323

PETITION

ILLINOIS  
COMMERCE COMMISSION  
APR 28 2 08 PM '00  
CHIEF CLERK'S OFFICE

Pursuant to Section 8-403.1 of the Illinois Public Utilities Act (220 ILCS 5/8-403.1) ("Section 8-403.1"), BMC Energy, LLC ("BMC") hereby files this Petition for a determination that an electric generating facility that will be fueled by landfill methane and located adjacent to the EnvironTech Landfill in Morris, Illinois will be a Qualified Solid Waste Energy Facility ("QSWEF") as defined in Section 8-403.1. In support of its Petition, BMC states as follows:

1. BMC is a limited liability company organized under the laws of the State of Delaware and qualified to do business in the State of Illinois. Zahren Alternative Power Corporation ("ZAPCO"), a Delaware corporation, owns one hundred percent (100%) of BMC. ZAPCO is owned by multiple shareholders, none of whom owns more than forty percent (40%) of the company, and none of whom is a utility. BMC is in the process of acquiring all rights and interests in an electric generating facility fueled by landfill methane ("Facility") and located adjacent to the EnvironTech

Landfill in Morris, Illinois from Morris Genco, LLC ("Morris Genco"). The anticipated closing date will be during the second quarter of the year 2000.

2. On April 24, 1998, Morris Genco petitioned the Illinois Commerce Commission for a determination that the Facility is a QSWEF as defined in Section 8-403.1. The Commission entered its Order granting the Morris Genco Petition on October 7, 1998. (A copy of the 1998 Order is attached hereto as Attachment A). Concurrently with the filing of this Petition, Morris Genco, by and through its agent and managing member, Yankee Energy Services Company, filed its Motion in related Docket No. 98-0322 seeking rescission of the 1998 Order. (A copy of the Motion of Morris Genco to Rescind Illinois Commerce Commission Order is attached hereto as Attachment B.) Morris Genco seeks rescission of the 1998 Order, effective upon the determination by the Commission that the Facility will continue to be a QSWEF as defined by Section 8-403.1 subsequent to acquisition by BMC, and upon notice to the Commission of the completion of the transfer of all rights and interest in the Facility to BMC.

3. BMC now files this Petition to notify the Commission of the impending change in ownership of the Facility, and seeks a determination that the Facility will continue as a QSWEF as defined in Section 8-403.1 after the acquisition is completed.

4. Section 8-403.1 defines the term "Qualified Solid Waste Energy Facility" as a facility that (a) meets the definition of the term that is contained in the Local Solid Waste Disposal Act and (b) possesses characteristics that would enable it to qualify as a cogeneration or small power production facility under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). Under the Local Solid Waste Disposal Act, a "Qualified Solid Waste Energy Facility" is either (a) "a solid waste pollution control facility" or (b) "a facility which uses methane gas generated from landfills."

( 415 ILCS 10/1 et seq.) As described herein, the Facility will be a qualifying facility under PURPA and because it burns landfill methane, will meet the definition of a "Qualified Solid Waste Energy Facility" contained in the Local Solid Waste Disposal Act. Therefore, the Facility also will satisfy the criteria for qualification as a QSWEF under Section 8-403.1.

5. The Facility will be a qualifying facility under PURPA. To evidence that qualification, Morris Genco notified the Federal Energy Regulatory Commission ("FERC") of the Facility's qualifying status on April 21, 1998 in Docket No. QF98-55-000, pursuant to Section 292.207 of FERC's Rules of Practice and Procedure. That filing was part of the record in Docket No. 98-0322 and BMC requests that the Commission take administrative notice of that portion of the record in Docket No. 98-0322 for purposes of this proceeding. On March 16, 2000, BMC filed a Notice of Self-Recertification in Docket No. QF98-55-001 advising FERC of the upcoming change in the Facility's ownership and of BMC's intention to expand the Facility's capacity. A copy of that Form 556, Notice of Self-Recertification, stamped to indicate receipt by FERC, is included herewith as Exhibit ML-1 to Attachment C, the Direct Testimony of Martin F. Laughlin. On April 13, 2000, BMC filed a second Notice of Self-Recertification notifying FERC that Illinois Electrical Generation Partners, L.P. ("IEGP") will be the operator of the Facility. A copy of Form 556, Notice of Self-Recertification, filed in Docket No. QF98-55-002, stamped to indicate receipt by FERC, is included herewith as Exhibit ML-2 to Attachment C.

6. Under Section 8-403.1(e) of the Public Utilities Act, an electric utility is not obligated to enter into an agreement to purchase the output of a QSWEF where the QSWEF is owned by an entity primarily engaged in the business of producing or selling electricity or natural gas from non-QSWEF facilities. For purposes of that analysis, the Commission has found that an owner is an

entity that owns more than a fifty percent interest in the facility. Under that analysis, BMC is the owner of the Facility and ZAPCO is the owner of BMC. None of the entities with an ownership interest in ZAPCO owns more than forty percent interest. Accordingly, the only "owners" for purposes of this petition are ZAPCO and BMC. As shown in ML3 to Attachment C, both ZAPCO and BMC own generating facilities other than the Facility that is the subject of this Petition. However, in the case of both ZAPCO and BMC, significantly more than fifty percent of owned generating capacity installed at present, and anticipated to be installed in the future, is QSWEF capacity. Therefore, for purposes of the analysis that Commission Staff has presented in earlier proceedings under Section 8-403.1, neither ZAPCO nor BMC is primarily engaged in the business of producing or selling electricity or natural gas from non-QSWEF facilities.

7. The Facility will be operated by Illinois Electrical Generation Partners, L.P. ("IEGP"), a Delaware limited partnership. In its order dated October 8, 1997, in Docket Nos. 97-0073, 97-0074 and 97-0075 (consolidated) the Commission found that three generating facilities operated by IEGP qualified as QSWEF's. The ownership of IEGP has not changed since that order was issued. Accordingly, there are no ownership issues relating to the operator of the Facility that must be addressed in this proceeding.

8. The Facility is expected to commence operation during the second calendar quarter of the year 2000. Electricity generated at the Facility will be sold to the Commonwealth Edison Company.

9. BMC intends to voluntarily create a fund to reimburse the State of Illinois in connection with payments received pursuant to Section 8-403.1. Reimbursement will begin ten years after the beginning of commercial operation and will be completed no later than ten years after

reimbursement begins. All contributions to the fund account will come from revenues from electric sales and interest earned by the fund. The funds will be held by John Hancock Funds, Inc. in a discreet account. BMC will direct John Hancock to maintain the fund as an investment grade portfolio on a consolidated basis as defined by Moody's Investors Service and Standard & Poor's. Additional details with respect to the fund are included in Attachment D hereto, the Confidential Direct Testimony of Martin F. Laughlin.

10. In support of this Petition, BMC has attached hereto as Attachment C, the Direct Testimony, and as Attachment D, the Confidential Direct Testimony of Martin F. Laughlin, Vice President of BMC and Vice President of IEGP. A letter from the Illinois Environmental Protection Agency stating that it has received and approved a solid waste management plan for Grundy County in which the Facility will be located. That letter was entered into the record as Attachment D to the Petition in related Docket No. 98-0322 and was found by the Commission to be sufficient for a determination that the Facility qualified as a QSWEF. BMC requests that the Commission take administrative notice of that letter for purposes of this proceeding.

11. BMC believes that this Petition, the attachments hereto, and the material submitted to the Commission on a confidential basis in connection with this Petition, provide all the information necessary to enable the Commission to determine that the Facility will continue to be a QSWEF after it is acquired by BMC. Accordingly, BMC respectfully requests that the Commission grant this Petition expeditiously and without a hearing. Expeditious action by the Commission will permit BMC to avoid incurring those costs associated with participation in a hearing and to finalize the acquisition of the Facility as soon as possible.

12. BMC respectfully requests that this Commission:

(a) Issue an order determining that the above described electric generating facility fueled by landfill methane which will be located adjacent to the EnvironTech Landfill in Morris, IL will continue to be a Qualified Solid Waste Energy Facility pursuant to Section 8-403.1 after BMC assumes ownership of the Facility;

(b) Treat as confidential Attachment D hereto; and

(c) Take administrative notice of the FERC Notice of Self-Certification and the letters issued by the Illinois Environmental Protection Agency which were in the record before the Commission in Docket No. 98-0322.

WHEREFORE, BMC prays that this Commission issue an order determining that the above described electric generating facility fueled by landfill methane which will be located adjacent to the EnvironTech Landfill in Morris, IL will continue to be a qualified solid waste energy facility pursuant to Section 8-403.1 of the Illinois Public Utilities Act after BMC assumes ownership of the Facility. BMC prays that the Commission grant the relief requested in the foregoing petition expeditiously and without a hearing.

Respectfully submitted,

BMC ENERGY, LLC

By:



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Martin F. Laughlin  
Vice President  
BMC Energy, LLC  
Vice President  
Illinois Electrical Generation Partners, L.P.

FREDDI L. GREENBERG  
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Counsel for BMC Energy, LLC

STATE OF CT )  
COUNTY OF Norfolk ) ss.

**VERIFICATION**

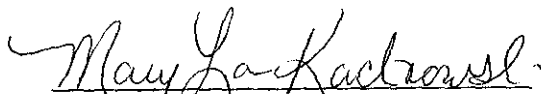
Martin F. Laughlin, being first duly sworn, upon oath deposes and says that he is Vice President of BMC Energy, LLC, the purchaser of an electric generation facility fueled by landfill methane and located adjacent to the EnvironTech Landfill in Morris, Illinois, and Vice President of Illinois Electrical Generation Partners, L.P., the prospective operator of the aforesaid generating facility, that he has read the foregoing Petition, and that the facts and matters set forth therein are true and correct to the best of his knowledge and belief.



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MARTIN F. LAUGHLIN  
Vice President  
BMC Energy, LLC  
Vice President  
Illinois Electrical Generation Partners, L.P.  
40 Tower Lane  
Avon, Connecticut 06001  
(860) 678-7537

Subscribed and sworn to before me  
this 12 day of April, 2000.

  
Notary Public

MARY LOU KACHNOWSKI  
NOTARY PUBLIC  
MY COMMISSION EXPIRES NOV. 30, 2001